

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SAMUEL G. ALLEN	:	SHORT FORM ORDER DTA #808589
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and the Administrative Code of the	:	
City of New York for the Years 1982, 1983, 1984	:	
and 1985.	:	

Petitioner filed a notice of motion for summary determination, dated December 14, 1990, on the basis that there is no material issue of fact; and, upon the undated affidavit of Samuel G. Allen in support thereof, and upon the pleadings had herein, to wit: the petition, answer, reply, demand for a bill of particulars and bill of particulars and petitioner's first and second memoranda of law, and upon the affidavit of Kenneth J. Schultz, Esq. in opposition to the motion for summary determination, dated December 19, 1990, it is ordered that:

Petitioner's motion for summary determination on the basis that there is no material issue of fact pursuant to 20 NYCRR 3000.5(c)(1) is denied. From all the documents submitted, there are material and triable issues of fact with regard to the issue of domicile and, therefore as a matter of law, summary determination cannot be granted. (20 NYCRR 3000.5[c][1].)

The burden of demonstrating that a deficiency assessment is erroneous is on the petitioner. (Tax Law § 689[e]; see Spartacus Delia v. Chu, 106 AD2d 815, 484 NYS2d 204, 205.) If there are any facts or reasonable inferences from the facts to support the Commissioner of Taxation and Finance's determination, it must be confirmed. (Levin v. Gallman, 42 NY2d 32, 34, 396 NYS2d 623, 625.) The Division of Taxation introduced correspondence between petitioner and the state of Connecticut, Department of Revenue Services, during the years in issue herein which indicate that petitioner represented his residence to be in New York State.

These letters add significant weight to the Division's position and clearly raise issues of fact with regard to petitioner's denial of a New York domicile for the years in issue.

Petitioner's motion for summary determination is denied in all respects, and the matter will be scheduled for hearing on the next available calendar.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE